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Attorney for Defendant

**THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

CONNELLY COMPANY)	
INCORPORATED, a Washington)	No.
Corporation doing business as Lodi)	
Water Company,)	DEFENDANT'S NOTICE OF
)	REMOVAL TO UNITED STATES
Plaintiff,)	DISTRICT COURT
)	
vs.)	
)	
PRIMO WATER CORPORATION, a)	
Delaware Corporation,)	
)	
Defendant.)	
)	

Pursuant to 28 U.S.C. 1441(b), the Defendant, Primo Water Corporation
("Primo Water"), by and through its attorneys of record, Paine Hamblen LLP,

DEFENDANT'S NOTICE OF REMOVAL TO UNITED
STATES DISTRICT COURT - 1

PAINE HAMBLÉN LLP
717 WEST SPRAGUE AVENUE, SUITE 1200
SPOKANE, WASHINGTON 99201
PHONE (509) 455-6000

1 hereby gives notice of removal of the above-entitled action from the Superior
2 Court of the State of Washington, in and for the County of Stevens, to the United
3 States District Court for the Eastern District of Washington, and in support thereof,
4 states as follows:
5

6 1. The above-entitled action was commenced in the Superior Court of
7 the State of Washington, in and for the County of Stevens, on or about
8 September 23, 2014, and is currently pending in that Court. It is believed that a
9 Summons was issued at or about that same time.
10

11 2. On or about September 23, 2014, Defendant Primo Water was served
12 with a copy of the Complaint for Breach of Contract and Damages ("Complaint").
13 A copy of the Complaint is attached hereto as part of Exhibit 1.
14

15 3. On or about September 23, 2014, Defendant Primo Water was also
16 served with a copy of the Summons. A copy of the Summons is attached hereto as
17 part of Exhibit 1.
18

19 4. This is a civil action of which this Court has original jurisdiction
20 under 28 U.S.C. 1332, and is one which may be removed to this Court by the
21 Defendant Primo Water pursuant to the provisions of 28 U.S.C. 1441(b), in that it
22 is a civil action between citizens of different states and the manner in controversy
23 exceeds the sum of \$75,000.00, exclusive of interest and costs.
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25
26

1 5. The Defendant, upon information and belief, believes that Plaintiff,
2 Connelly Company Incorporated d/b/a Lodi Water Company ("Lodi Water"), is a
3 Washington Corporation. Paragraph 1.1 of the Plaintiff's Complaint states that
4 Plaintiff is a Washington Corporation. (*See*, attached Complaint) Defendant is a
5 Delaware Corporation. (*See*, Entity Status Report of the Delaware Secretary of
6 State, attached hereto as Exhibit 2) Paragraph 2.1 of Plaintiff's Complaint
7 acknowledges that Defendant is a Delaware Corporation. (*See*, Complaint)
8

9
10 6. Thirty (30) days have not yet expired since this action became
11 removable to the United States District Court for the Eastern District of
12 Washington.
13

14 7. Venue is proper in the Eastern District of Washington pursuant to 28
15 U.S.C. §1391(b).
16

17 8. Plaintiff has alleged causes of action for violation of the Consumer
18 Protection Act, R.C.W. §19.86.010 *et seq.* related to a Sub-Distributor Agreement
19 between Plaintiff Lodi Water and third-party H2 Oregon Water Company.
20

21 The Defendant, without admitting that the Plaintiff is entitled to any relief,
22 asserts that, based upon the relief sought by the Plaintiff, it is "more likely than
23 not" that the actual amount in controversy is in excess of \$75,000, exclusive of
24 interest and costs. *See*, Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 403-04
25

(9th Cir. 1996). In Plaintiff's Complaint, Plaintiff alleges the following damages: (a) \$32,540.61 for start-up costs; (b) \$7,140.00 for storage fees through September 30, 2014; (c) \$1,020.00 for storage fees for October 2014; (d) \$6,325.72 for monies owed for products bottled and delivered; (e) \$25,000.00 for violations of the Consumer Protection Act, § 19.86.010 *et seq.* (maximum penalty authorized); and (f) not less than \$5,000.00 for attorney fees and costs permitted for violations of the Consumer Protection Act, § 19.86.010 *et seq.* (See, attached Complaint) Thus, Plaintiff seeks damages, at a minimum, of \$77,026.33.

To that end, recoverable attorney fees, which are sought by the Plaintiff here, are included in determining whether the jurisdictional limit of \$75,000.00 is satisfied. The United States Supreme Court, in Springstead v. Crawfordsville State Bank, 231 U.S. 541, 541-42 (1913), held that recoverable attorney fees are included in the amount in controversy pursuant to 28 U.S.C. §1332. See, also, Vacca v. Meetze, 499 F.Supp. 1089, 1091 (S.D. Ga., 1980) (attorney fees "allowed by applicable law, may be included in determining the amount in controversy"); Premier Industry Corp. v. Texas Industrial Fastener Co., 450 F.2d 444, 447 (5th Cir. 1971).

It is a good faith belief of the Defendant that the actual and potential damages the Plaintiff is seeking exceed the sum of \$75,000.00. Finally, the

1 Plaintiff seeks pre-judgment interest and any other relief deemed just and
2 equitable; thus, adding further to the aforementioned amounts in controversy that
3 already exceed \$75,000.00.
4

5 9. Copies of the State Court docket, together with all pleadings, process
6 and orders served on the Defendant in this action are attached hereto as Exhibit 1.
7

8 10. Pursuant to 28 U.S.C. 1446(d), the Defendant's Notice to Clerk of
9 Removal to United States District Court, and a copy of this Notice, are being
10 served upon Plaintiff's counsel on the date this Notice is signed.
11

12 11. Pursuant to 28 U.S.C. 1446(b), the Defendant's Notice to Clerk of
13 Removal to United States District Court has been sent for filing with the Clerk of
14 the Superior Court of the State of Washington, in and for the County of Stevens, on
15 the date this Notice is signed.
16

17 WHEREFORE, Defendant requests that this action be removed from the
18 Superior Court of the State of Washington, in and for the County of Stevens, to the
19 United States District Court for the Eastern District of Washington.
20
21
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26

1 DATED this 20th day of October, 2014.

2 PAINE HAMBLÉN LLP

3
4
5 By: 

6 Gregory C. Hesler, WSBA #34217
7 717 West Sprague Avenue, Suite 1200
8 Spokane, Washington 99201-3505
9 Telephone: (509) 455-6000
10 Facsimile: (509) 838-0007
11 greg.hesler@painehamblen.com
12 Attorneys for Defendant
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27 DEFENDANT'S NOTICE OF REMOVAL TO UNITED
28 STATES DISTRICT COURT - 6

PAINE HAMBLÉN LLP
717 WEST SPRAGUE AVENUE, SUITE 1200
SPOKANE, WASHINGTON 99201
PHONE (509) 455-6000

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2014, I served a copy of the foregoing **DEFENDANT'S NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT** on the following parties by first class mail, postage prepaid, addressed to:

Chris A. Montgomery
Montgomery Law Firm
344 East Birch Avenue
P.O. Box 269
Colville, Washington 99114-0269

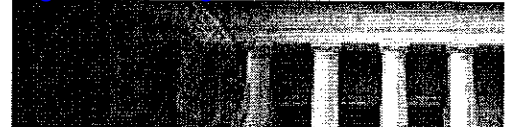
By: 

Gregory C. Hesler, WSBA No. 34217
PAINE HAMBLÉN LLP
717 West Sprague Avenue, Suite 1200
Spokane, Washington 99201-3505
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greg.hesler@painehamblen.com
Attorney for Defendant Primo Water Corporation

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DEFENDANT'S NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT - 7

PAINE HAMBLÉN LLP
717 WEST SPRAGUE AVENUE, SUITE 1200
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Superior Court Case Summary

Court: Stevens Superior
Case Number: 14-2-00446-8

Sub	Docket Date	Docket Code	Docket Description	Misc Info
-	09-23-2014	FILING FEE RECEIVED	Filing Fee Received	240.00
1	09-23-2014	SUMMONS & COMPLAINT	Summons & Complaint-Monies Owed	
2	09-24-2014	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit Of Personal Service	
3	09-29-2014	NOTICE OF APPEARANCE ATD0001	Notice Of Appearance Hesler, Gregory C	

About Dockets

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Stevens Superior
 215 S Oak St, Rm 209
 Colville, WA 99114-2862

Map & Directions

509-684-7520[Phone]
 509-684-7527[Phone]
 509-685-0679[Fax]

Disclaimer

What is this website? It is a search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

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You can contact the court in which the case was filed to view the court record or to order copies of court records.

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FILED
IN SUPERIOR COURT
STEVENS COUNTY

2014 SEP 23 AM 11:51

PATRICIA A. CHESTER
COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF STEVENS

CONNELLY COMPANY INCORPORATED,
a Washington Corporation doing business as
Lodi Water Company,

Plaintiff,

vs.

PRIMO WATER CORPORATION, a
Delaware Corporation,

Defendant.

NO: 2014 2 00446 8

SUMMONS
SIXTY (60) DAYS

TO: PRIMO WATER CORPORATION, a Delaware Corporation, Defendant;
and its Registered Agent, NATIONAL CORPORATE RESEARCH, LTD.,
615 S. Dupont Highway, Dover, Delaware 19901.

A lawsuit has been started against you in the above-entitled Court by Plaintiff,
CONNELLY COMPANY INCORPORATED, a Washington Corporation doing business as
Lodi Water Company. Plaintiff's claim is stated in the written Complaint, a copy of which is
served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating
your defense in writing, and serve a copy upon the person signing this Summons within sixty
(60) days after the service of this Summons, excluding the date of service, or a default judgment

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SUMMONS
SIXTY (60) DAYS – Page 1

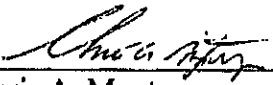
MONTGOMERY LAW FIRM
344 East Birch Avenue
P.O. Box 269
Colville, WA 99114-0269
(509) 684-2519
(509) 684-2188 Fax

1 will be entered against you without notice. A default judgment is one where the Plaintiff is
2 entitled to what it asks for because you have not responded. If you serve a Notice of Appearance
3 on the undersigned person, you are entitled to notice before a default judgment may be entered.

4 If you wish to seek the advice of an attorney in this matter, you should do so promptly
5 so that your written response, if any, may be served on time.

6 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
7 State of Washington.

8 DATED this 23rd day of September, 2014.

9
10 
11 Chris A. Montgomery
12 WSBA #12377
13 Attorney for Plaintiff
14 344 E. Birch Avenue
15 P.O. Box 269
16 Colville, Washington 99114-0269
17 (509) 684-2519
18
19
20
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FILED
IN SUPERIOR COURT
STEVENS COUNTY

2014 SEP 23 AM 11:51

PATRICIA A. CHESTER
COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

CONNELLY COMPANY INCORPORATED,
a Washington Corporation doing business as
Lodi Water Company,

Plaintiff.

vs.

PRIMO WATER CORPORATION, a
Delaware Corporation,

Defendant.

NO: 2014 2 00446 8

COMPLAINT FOR BREACH OF
CONTRACT AND DAMAGES

COMES NOW the Plaintiff, CONNELLY COMPANY INCORPORATED, a
Washington Corporation doing business as Lodi Water Company, by and through its attorney,
Chris A. Montgomery of Montgomery Law Firm, and states the following:

I.

1.1 Plaintiff, CONNELLY COMPANY INCORPORATED, is a duly licensed
Washington Corporation doing business as Lodi Water Company, hereinafter sometimes
referred to as LODI. James A. Connelly is the Registered Agent for Plaintiff, CONNELLY
COMPANY INCORPORATED, a Washington Corporation doing business as Lodi Water
Company.

II.

2.1 Defendant, PRIMO WATER CORPORATION, is a Delaware Corporation, doing business in Washington, hereinafter sometimes referred to as PRIMO. PRIMO WATER CORPORATION has not registered with the State of Washington as a foreign corporation. Its Registered Agent in the State of Delaware is NATIONAL CORPORATE RESEARCH, LTD, 615 S DUPONT HWY, DOVER, DELAWARE 19901. PRIMO is authorized to transact business in the State of Washington pursuant to RCW 23B.15.010(2)(e), but has failed to designate a Registered Agent in the State of Washington.

III.

3.1 PRIMO is in the business of procuring, selling and distributing bottled water, and related products and services, to customers throughout the United States and Canada through independent contractors, including 3 and 5 gallon pre-packaged bottle water exchange services (the "*Primo Business*").

IV.

4.1 PRIMO was established in Eastern Washington and Northern Idaho using Clear Water Springs Company for bottling and distributing PRIMO products. Clear Water Springs Company notified PRIMO on or about June 30, 2013 that it was ending its association with PRIMO on or about October 1, 2013. PRIMO enlisted H2 OREGON COMPANY, with whom it had a regional bottling and distributing agreement in the Portland, Oregon Area to help locate a new bottling distributor for Eastern Washington and Northern Idaho. PRIMO began negotiations with DS Waters of America, Inc., a Delaware Corporation, to take over the bottling

1 and distributing handled by Clear Water Springs Company. The Strategic Alliance Agreement
2 with DS Waters of America did not become effective until November 12, 2013.

3 V.

4 5.1 PRIMO knew, or had reason to know, that there was going to be a period of time
5 during which it would have no Strategic Alliance Agreement with any bottler and distributor for
6 Eastern Washington and Northern Idaho, so it enlisted the services of various small bottler and
7 distributor companies like LODI to bottle and distribute PRIMO labeled products in Eastern
8 Washington and Northern Idaho.

9 VI.

10 6.1 H2 OREGON contacted LODI on behalf of PRIMO to inquire if LODI was
11 interested in the "*Primo Business*" for areas of Eastern Washington. Upon LODI indicating that
12 it would be interested in bottling and distributing PRIMO products H2 OREGON referred
13 LODI to PRIMO. Bob Heer, Director of Operations for the Western Region for PRIMO,
14 contacted LODI to fulfill PRIMO'S immediate need to get a bottler and distributor in place for
15 areas of Northeastern Washington, indicating that time was of the essence.

16 VII.

17 7.1 A meeting was arranged for Bob Heer, Director of Operations for the Western
18 Region for PRIMO, to come to the LODI bottling and distributing facility in Chewelah,
19 Washington, within a week of initial contact, to inspect the LODI facility to make sure that the
20 LODI facility met PRIMO standards. The inspection occurred on or about August 29, 2013. The
21 LODI facility passed inspection and Bob Heer offered LODI the bottling and distributorship for
22 Eastern Washington and North Idaho (except for the Tri-Cities Area of Richland, Kennewick
23 and Pasco), which would include LODI needing to modify its production and warehouse facility

1 to accommodate PRIMO products for what was represented as a potential "long term"
2 agreement with PRIMO. LODI indicated that it needed a week or so to look at what it would
3 take to make the modifications to bottle and distribute PRIMO products, so no immediate
4 agreement was reached.

5 **VIII.**

6 8.1 On or about September 6, 2013 LODI contacted Bob Heer to indicate its
7 willingness to bottle and distribute PRIMO products if an appropriate agreement could be
8 reached. On September 11, 2013 Tim Dougherty of H2 OREGON emailed LODI a Primo Sub-
9 Distributor Agreement that had been prepared at the direction of Bob Heer, even though it
10 exceeded any existing, or concurrent authority granted to H2 OREGON by PRIMO in H2
11 OREGON'S Regional Bottling and Distributing Agreement. A copy of the open ended Primo
12 Sub-Distributor Agreement sent to and signed by LODI and H2 OREGON is attached hereto as
13 Exhibit "A" and incorporated as if though fully set-forth herein.

14 **IX.**

15 9.1 James A. Connelly, President of LODI, spoke with Bob Heer before signing the
16 Primo Sub-Distributor Agreement, who explained that PRIMO wanted to contract with LODI
17 through H2 OREGON to expedite the transition between Clearwater Springs and LODI, who
18 provided assurances that there would be a separate "long term" agreement between PRIMO and
19 LODI, within a year or so, at the end of the transition period, unless LODI wanted out of the
20 Agreement on ninety (90) days advance notice, or LODI'S performance fell below the company
21 standard of PRIMO (at no time relevant hereto did LODI'S performance ever fall below the
22 company standards of PRIMO).
23

1 9.2 David Bunn, Director of Operations-West for PRIMO distributed a Service
2 Partner Letter Dated October 15, 2013 and followed up with a personal call to James A.
3 Connelly, President of LODI, on December 20, 2013 introducing himself and David Mills, Vice
4 President of Finance for PRIMO, by way of a conference call. It was during this call that Mr.
5 Bunn fired up the smoke and mirrors by trying to make it appear that LODI was working under
6 the H2 OREGON Banner. Mr. Connelly immediately corrected Mr. Bunn by informing him that
7 his contract with PRIMO and H2 OREGON was fashioned at the direction of Bob Heer, former
8 Director of Operations for the Western Region for PRIMO, to facilitate PRIMO'S immediate
9 need to get a bottler and distributor in place for Northeastern Washington.

10 9.3 Both H2 OREGON and LODI were misled by Bob Heer as he explained that he
11 was trying to position H2 OREGON to take over LODI'S Region in the event LODI did not
12 work out and wanted out of the contract. The contract provided for compensation at \$2.90 for
13 each PRIMO 5 or 3 gallon bottle sold at store level, with LODI being paid by the 15th of the
14 month for the preceding month's sales with a breakdown for each store.

15 9.4 After LODI started bottling and distributing for PRIMO, commencing, October
16 1, 2013, LODI was advised on October 15, 2013 by PRIMO that David Bunn would be taking
17 over for Bob Heer. On November 12, 2013, through a public announcement, PRIMO
18 announced its alliance with D.S. Waters, however, PRIMO did not contact LODI directly to
19 advise of the impact of the alliance with D.S. Waters. Through H2 OREGON, LODI was
20 advised to submit an invoice for recovery of its start-up costs, which has never been paid by
21 PRIMO.

X.

10.1 In order for LODI to begin bottling and distributing PRIMO products it was necessary for LODI to modify it's bottling and distributing facility. PRIMO agreed to provide the necessary Reverse Osmosis (RO) equipment, mineral injection system, minerals and formula, transportation racks, bottles – 3 and 5 gallon, caps, route support systems, hardware and software. In order for LODI to incorporate the PRIMO equipment, etc. into its bottling and distributing facility it was necessary for LODI to add storage capacity for PRIMO finished products by modifying its plumbing, production space, and warehouse facility. Diagrams of the pre-existing and modified production flow for LODI are attached hereto as Exhibits "B" and "C" respectively and incorporated by this referenced as if fully set-forth herein.

XI.

11.1 An itemized list of damages suffered by LODI as a result of its reliance on PRIMO'S assurances, through its authorized representative, Bob Heer, Director of Operations for the Western Region for PRIMO, is as follows:

Lodi Water Company's direct costs to add PRIMO Water Production:

FIXED ASSET PURCHASE:	
1500 gal Storage Tank	\$1,413.33
Fittings and Pipe	\$1,805.14
Platform Materials	\$ 591.69
Pump	\$ 844.01
Electrical	\$ 403.50
Misc. Supplies - Paint, plumbing etc.	\$ 912.44
SUB-TOTAL	\$5,970.11
LABOR:	
Platform - 36 man Hours @ \$25/hr.	\$ 900.00
Painting 12 man hours @25/hr.	\$ 300.00
Plumbing 16 man hours @\$60/hr.	\$ 960.00
Supervisor 54 man hours @\$50/hr.	\$2,700.00
SUB-TOTAL	\$4,856.00

MILEAGE:	
2 trips to Spokane 220 miles @\$.55/mile	\$121.00
15 Trips to Chewelah 90 miles @\$.55/mile	\$49.50
SUB-TOTAL	\$170.50
Dismantling of RO, Mineral Injection, Storage Tank and Platform	
Projected Cost	\$4,500.00
Lodi Water Company Planning and Administrative Fees	
88 hrs. @\$80/hr.	\$7,040.00
Professional and Consulting Services	\$5,000.00
TOTAL	\$32,540.61

Note: This does *NOT* include Lodi Water Company's allocated costs of fair rental value of approximately 1,500 square feet of warehouse space at \$.68 per square foot (\$1,020.00 per month, times seven (7) months, February 1, 2014 through September 30, 2014 = \$7,140.00, plus \$1,020.00 each month thereafter until removed) to store fixed assets to service PRIMO.

XII.

12.1 Product bottled and delivered by LODI for the Months of October, 2013 through January, 2014 which still has not been paid for by PRIMO is set-forth below as follows:

Bottles Delivered – 6008 @ \$2.90 Each	\$17,423.20
Bottles Paid – 3449 @ \$2.90 Each	\$10,002.20
Bottles Paid – 482 @ \$2.59 Each	\$1,248.39
BALANCE DUE TO LODI:	
Unpaid Bottles – 2077 @ \$2.90 Each	\$6,023.30
Short Paid Bottles – 482 @ \$.31 Each	\$149.42
Bottles Held In Inventory – 170 @ \$.90 Each	\$153.00
TOTAL DUE LODI:	\$6,325.72

12.2 Pursuant to RCW 19.52.010 LODI is entitled to recover twelve percent (12%) interest from the normal due date of February 15, 2014 to September 23, 2014 in the amount of \$458.54, with a \$2.08 per diem each day thereafter that the sum remains unpaid.

XIII.

13.1 The actions of Primo Water Corporation as described herein amount to Fraudulent Inducement and an Unfair Business Practice in Violation of RCW 19.86.010 et seq.,

1 commonly known as the Consumer Protection Act. This Act declares unfair competition and
 2 practices unlawful and provides for recovery of actual damages, reasonable attorney's fees,
 3 costs and treble punitive damages up to \$25,000.00.

4 XIV.

5 14.1 PRIMO may attempt to claim that it does not have a contract with LODI due to
 6 its manipulation of its pre-existing Agreement with H2 OREGON. However, privity of contract
 7 is not an element of a Consumer Protection Act Claim and the remedies afforded under the Act
 8 are not limited to Washington citizens. *See Armer v. Openmarket, Inc.*, 2009 U.S. Dist. LEXIS
 9 72434, -- F. Supp. 2d -- (July 27, 2009). Private action under the Consumer Protection Act
 10 (CPA), Chapter 19.86 RCW, may be brought by one who is not in a consumer or other business
 11 relationship with the actor against whom the suit is brought. *See Panag v. Farmers Ins. Co. of*
 12 *Wash.*, 166 Wn.2d 27, 204 P.3d 885 (2009).

13 XV.

14 15.1 A violation of the Consumer Protection Act does not require a finding of
 15 conspiracy; thus, unilateral conduct which is unfair and anticompetitive may constitute a
 16 violation of the Act. *See State v. Black*, 100 Wn.2d 793, 676 P.2d 963 (1984). A claim for relief
 17 under the Consumer Protection Act need not be supported by proof of misrepresentation. *See*
 18 *Testo v. Russ Dunmire Oldsmobile, Inc.*, 16 Wn. App. 39, 554 P.2d 349 (1976). The actions of
 19 PRIMO'S authorized representatives, Bob Heer and David Bunn, as described in Paragraph
 20 Nos. 9.1 through 9.4 hereof demonstrate misrepresentations, unfair, and anticompetitive
 21 conduct by PRIMO which was reasonably relied upon by LODI and resulted in damages as
 22 outlined herein by LODI.

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XVI.

16.1 The presence of public interest is demonstrated when the proof establishes that (1) the defendant by unfair or deceptive acts or practices in the conduct of trade or commerce has induced the plaintiff to act or refrain from acting (LODI was induced to make substantial modifications to its operations to accommodate PRIMO with the promise of a long term relationship); (2) the plaintiff suffers damage brought about by such action or failure to act (LODI incurred substantial expenses modifying its facilities as result of the representations of PRIMO); and (3) the defendant's deceptive acts or practices have the potential for repetition (LODI was not the only independent bottler and distributor that was induced by PRIMO'S representations in this region). *See Anhold v. Daniels*, 94 Wn.2d 40, 614 P.2d 184 (1980). One who offers an opinion as to the future, knowing of but not disclosing facts that would lead a reasonable person to question the opinion, is chargeable with an unfair or deceptive act in violation of this act. *See Robinson v. McReynolds*, 52 Wn. App. 635, 762 P.2d 1166 (1988). PRIMO failed to disclose to LODI its on-going negotiations with D.S. Waters and others to take over the region and eliminate all the independent local bottlers and distributors.

XVII.

17.1 In determining whether a method of competition is unfair for purposes of the Act, a trier of fact may consider improper use of a competitor's customer lists, intent to destroy his business, and other factors relating to the good faith of the parties. *See Ivan's Tire Serv. Store, Inc. v. Goodyear Tire & Rubber Co.*, 10 Wn. App. 110, 517 P.2d 229 (1973), *aff'd*, 86 Wn.2d 513, 546 P.2d 109 (1976). LODI was induced by PRIMO'S actions to make substantial unnecessary modifications to its facilities to accommodate PRIMO, which took resources away from LODI to grow its business in a very competitive market. PRIMO and LODI compete head

1 to head in many bottled water products in retail locations. If a corporate officer participates in
 2 wrongful conduct, or knowingly approves of it, he is also liable for penalties. *See Grayson v.*
 3 *Nordic Constr. Co.*, 92 Wn.2d 548, 599 P.2d 1271 (1979). A deceptive practice in violation of
 4 this act is a type of wrongful conduct which justifies imposing personal liability on a
 5 participating corporate officer. *See Grayson v. Nordic Constr. Co.*, 92 Wn.2d 548, 599 P.2d
 6 1271 (1979). Bob Heer, David Bunn, and David Mills were corporate officers of PRIMO and
 7 made the representations on behalf of PRIMO. LODI reserves the right to amend this Complaint
 8 to include a claim for personal liability on behalf of Bob Heer, David Bunn, and David Mills
 9 should PRIMO contest this claim.

10 XVIII.

11 18.1 RCW 19.86.093. Civil action -- Unfair or deceptive act or practice -- Claim
 12 elements. In a private action in which an unfair or deceptive act or practice is alleged under
 13 RCW 19.86.020, a claimant may establish that the act or practice is injurious to the public
 14 interest because it:

- 15 (1) Violates a statute that incorporates this chapter;
- 16 (2) Violates a statute that contains a specific legislative declaration of public interest impact;
- 17 or
- 18 (3) (a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the
- 19 capacity to injure other persons.

20 18.2 PRIMO has violated RCW 19.86.010 and RCW 19.86.093 which contain a
 21 specific declaration of public interest impact by eliminating competition in a highly competitive
 22 bottled water market, resulting in fewer choices for the consumer. LODI and other local area
 23 bottled water producers and distributors have been injured by the actions of PRIMO.

1 XIX.

2 19.1 PRIMO fraudulently induced LODI to enter into the transaction. The facts
3 indicated above in Paragraph Nos. 1.1 through 18.1 indicate that LODI meets the essential
4 elements of fraud as set forth in numerous Washington cases. *See, e.g., Webster v. L. Romano*
5 *Eng'r Corp.*, 178 Wash. 118, 34 P.2d 428 (1934). Fraudulent Inducement Elements: (1) That
6 representation was made by defendant or with his authority (Bob Heer); (2) that it related to a
7 material fact (bottling and distribution of bottled water products); (3) that it was false and
8 wherein it was false (PRIMO); (4) that the plaintiff had a right to rely on it and did rely on it; (5)
9 that plaintiff was damaged as the result of the representations. *Eyers v. Burbank Co.*, 97 Wash.
10 220, 228, 166 P. 656, (1917).

11 XX.

12 20.1 LODI was induced by fraud committed by PRIMO to enter into a contract with
13 PRIMO. As a result, LODI may elect between two remedies: It may treat the contract as
14 voidable and sue for the equitable remedy of rescission; or it may treat the contract as existing
15 and sue for damages at law under the theory of "deceit." The latter is grounded in tort. A person
16 who has been injured by the fraud of another or others, by either a party or parties to a
17 transaction or a third party or third parties committing fraudulent acts involving or bringing
18 about the negotiation of a transaction, such transaction usually but not necessarily involving
19 business or commercial dealings, may maintain an action at law in tort or recover damages for
20 the injury received from the fraud and deceit perpetrated by such other or others. The
21 foundation of the action is not contract, but tort." 37 Am.Jur.2d Fraud and Deceit § 332 at 439.
22 [emphasis added]. *Woolcock v. Beartooth Ranch*, 196 Mont. 65, 637 P.2d 520 (1982)(purchase
23

1 of a bull at auction); *State ex rel. Dimler v. District Court*, 170 Mont. 77; 550 P.2d 917 (1976)
2 (purchase of house); and *Vance v. Schulder*, 547 S.W.2d 927 (Tenn. 1977) (securities).

3 **XXI.**

4 21.1 In the alternative, based upon the actions of PRIMO as described in Paragraph
5 Nos. 1.1 through 20.1 hereof, LODI is entitled to recover damages, as outlined herein, based
6 upon breach of contract, unjust enrichment, detrimental reliance, equitable estoppel, and/or
7 quantum meruit.


8 **PRAYER FOR RELIEF**

9 Based upon the foregoing, LODI requests the following relief:

- 10 1.) Judgment for its start-up costs in the amount \$32,540.61;
11 2.) Judgment for storage fees of \$7,140.00 through September 30, 2014, plus \$1,020.00
12 each month thereafter until the PRIMO equipment is removed from the LODI
13 warehouse facilities;
14 3.) Judgment for monies owed for PRIMO product bottled and delivered and never paid
15 for in the amount of \$6,325.72;
16 4.) Judgment for pre and post judgment interest owed in the amount of \$458.54 to
17 September 23, 2014, plus a per diem of \$2.08 for each day thereafter until paid in
18 full;
19 5.) Judgment in the amount of \$25,000.00 as the maximum penalty authorized by RCW
20 19.86.010 for violation of the Consumer Protection Act;
21 6.) Judgment for reasonable attorney's fees and costs in an amount of not less than
22 \$5,000.00 pursuant to RCW 19.86.010 for violation of the Consumer Protection Act;
23

7.) Judgment for such other and further relief as the Court may deem just and reasonable under the circumstances of this case.

DATED this 23rd day of September, 2014.


Chris A. Montgomery
WSBA #12377
Attorney for Plaintiff, Connelly Company
Incorporated, d/b/a Lodi Water Company

STATE OF WASHINGTON)
) ss.
COUNTY OF STEVENS)

I, JAMES A. CONNELLY, being first duly sworn, upon oath, depose and state as follows:

I am the President of Connelly Company Incorporated, a Washington Corporation doing business as Lodi Water Company, the Plaintiff in the above-entitled action. I have read the foregoing Complaint for Breach of Contract and Damages, know the contents thereof and believe the same to be true.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 23rd day of September, 2014 at Colville, Stevens County, Washington.

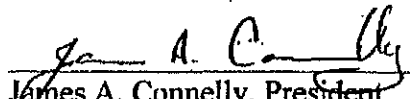

James A. Connelly, President,
Connelly Company Incorporated,
a Washington Corporation doing
business as Lodi Water Company

EXHIBIT "A"

EXHIBIT "A"

EXHIBIT

"A"

EXHIBIT "A"

EXHIBIT "A"

Primo Sub-Distributor Agreement

The following terms and conditions are between Lodi Water Company, Jim Connelly and Primo Regional Operator (RO), H2Oregon Water Company. This agreement covers the region and retail stores approved for Primo product distribution.

Distribution: Lodi Water Company will provide service and delivery to all locations in your area providing a service delivery schedule that meets the store needs to provide well-stocked inventory to avoid stock outs and maximize sales. Display racks and recycle centers are to be clean and maintained.

Recycle centers will be emptied on each visit, cleaned as needed, tickets replenished and kept in working order.

From time to time, display graphics may need changed from wear. All display racks, RC bins, ticket dispensers and graphic panels will be provided by Primo at no charge.

All promotional material or sales material will be provided, along with Primo support, to add new locations to your area.

Attached is the current customer location list and service area map.

Bottler: Lodi Water Company will bottle Primo brand bottled water to Primo specifications and standards.

Provided by Primo: RO equipment (loaned), mineral injection system (loaned), minerals and formula, transportation racks, bottles - 3 and 5 gallon, caps, route support systems, hardware and software.

Provided by Lodi Water Company: RO water storage tank, raw water, quality assurance testing, labor, processing and bottling, plant facility, inventory storage, transportation and product delivery.

Compensation: \$2.90 for each Primo 5 or 3 gallon bottle sold at store level. Most locations are a scan-based sale. Primo and its distributors are paid when the product is sold at store level. Lodi will be paid by the 15th of the month for preceding month's sales with a breakdown for each store.

Primo, H2Oregon and Lodi Water Company will work together to develop a team that maximizes sales and profitability. As new locations are assigned in your area, set-up compensation will be paid for each new location based on the Primo program for that store group. A sales commission will also be paid for stores added by Lodi and determined by Primo programs.

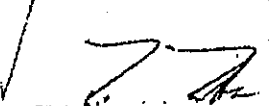
Primo reserves the right to cancel agreement with its distributors if quality standards of its product or service fall below the company standard.

Either party may cancel this agreement with 90 days written notice.

We look forward to a long relationship with our Primo team.


Lodi Water Company - Jim Connelly

9/11/13
Date


Primo RO - H2Oregon Water Company - Ross Rosette

10-3-13
Date

EXHIBIT "B"

EXHIBIT "B"

EXHIBIT

"B"

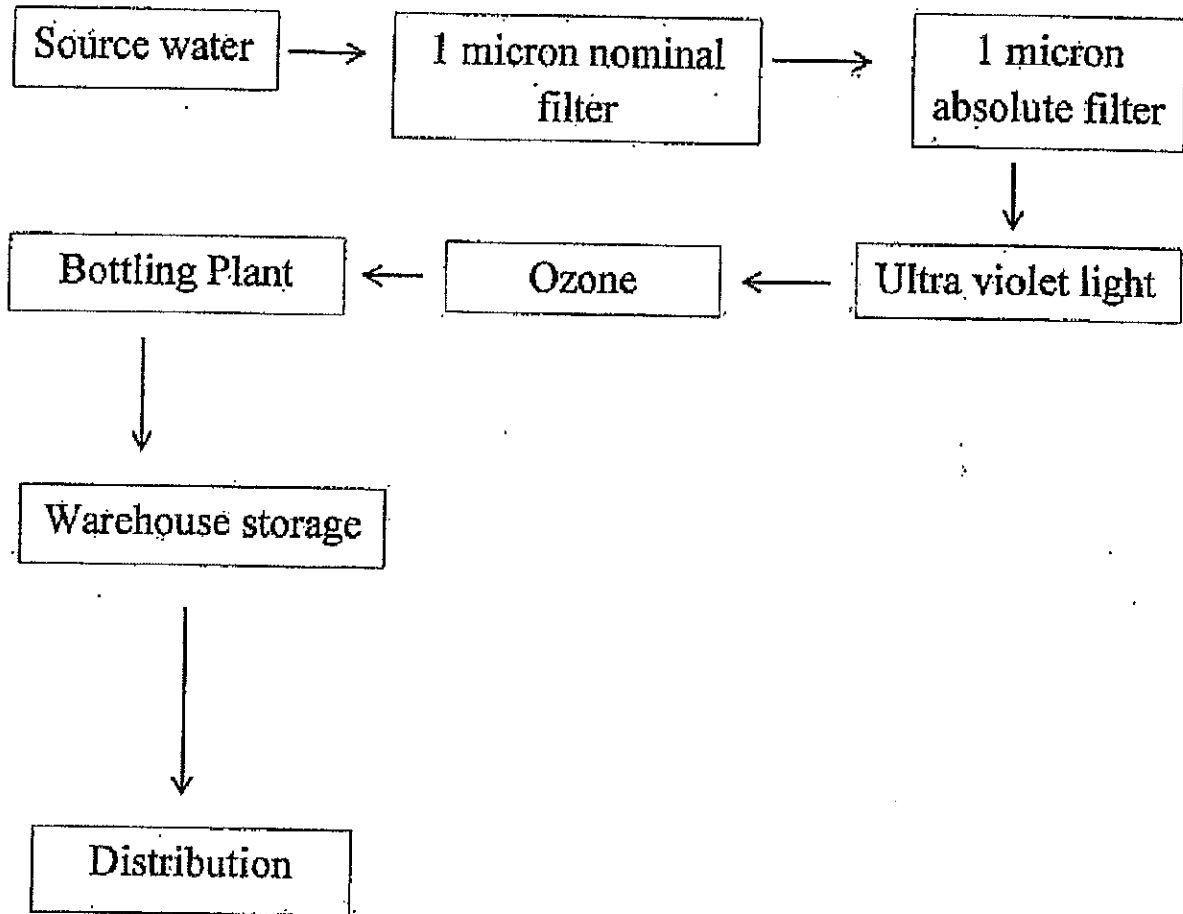
EXHIBIT "B"

EXHIBIT "B"

Lodi Water Company

PRODUCT FLOW

SITE #1



All processes are at ambient temperature.

EXHIBIT "C"

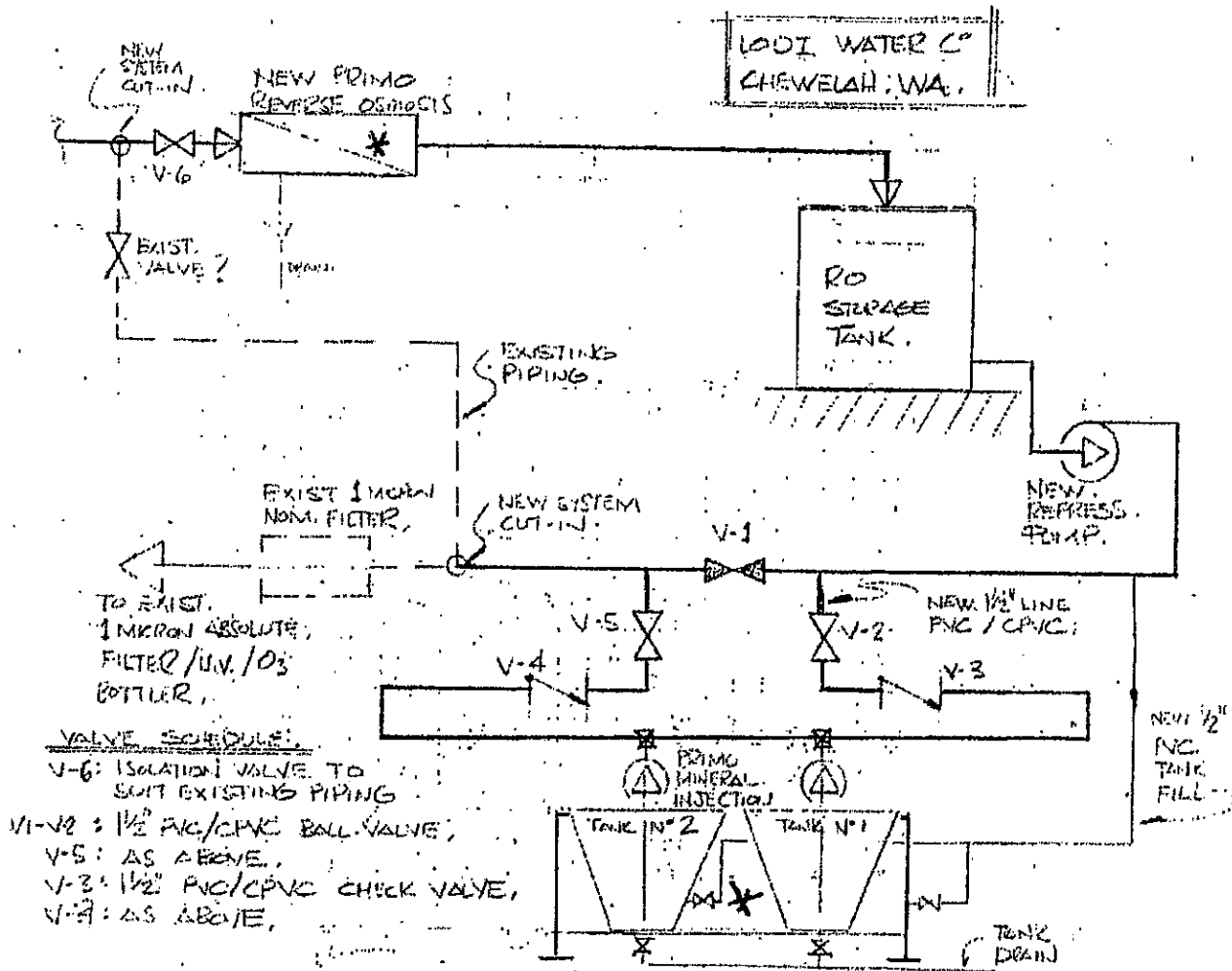
EXHIBIT "C"

EXHIBIT

"C"

EXHIBIT "C"

EXHIBIT "C"



* supplied by Primo

balance supplied by Lodi

FILED
IN SUPERIOR COURT
STEVENS COUNTY

2014 SEP 24 PM 1:48

PATRICIA A. CHESTER
COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

CONNELLY COMPANY INCORPORATED,
a Washington Corporation doing business as
Lodi Water Company,

Plaintiff,

vs.

PRIMO WATER CORPORATION, a
Delaware corporation,

Defendant.

NO: 2014-2-00446 8

COVER SHEET

AFFIDAVIT OF PERSONAL SERVICE

AFFIDAVIT OF PERSONAL SERVICE

AFFIDAVIT OF PERSONAL SERVICE
File No. 8819

MONTGOMERY LAW FIRM
344 East Birch Avenue
P.O. Box 269
Colville, WA 99114-0269
(509) 684-2519
(509) 684-2188 Fax

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

CONNELLY COMPANY INCORPORATED, }	
a Washington Corporation doing business as }	NO: 2014 2 00446 8
Lodi Water Company, }	
Plaintiff, }	
v. }	
PRIMO WATER CORPORATION, a }	
Delaware Corporation, }	
Defendant. }	

AFFIDAVIT OF PERSONAL SERVICE

STATE OF DELAWARE	}	
	}	ss:
COUNTY OF KENT	}	

I, Tina Irizarry, of the State of Delaware, County of Kent, being duly sworn, say that on the 24th day of September, 2014, I personally served a Summons and Complaint National Corporate Research, Ltd., located at 615 South DuPont Highway, Dover, DE 19901.

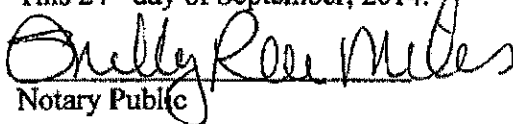
PRIMO WATER CORPORATION

Name of individual who accepted service: Ashley Groff @ 9:38 a.m.

Description of individual served: Caucasian female, approximately 5'4", 125 lbs., 20-25 years of age with blonde hair.


Tina Irizarry

Subscribed and sworn before me
This 24th day of September, 2014.


Notary Public

Shelly Rae Miles
Notary Public
State of Delaware
Kent County
Notary No. 20140114000009
My Commission Expires on Jan 14, 2016

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

CONNELLY COMPANY
INCORPORATED, a Washington
Corporation doing business as Lodi Water
Company,

Plaintiff,

vs.

PRIMO WATER CORPORATION, a
Delaware Corporation,

Defendant.

NO. 2014-2-00446-8

GR 17(a)(2) DECLARATION

I am the person responsible for the filing of the foregoing document, to which this declaration is attached as the last page pursuant to GR17(a)(2).

1. The document that is to be filed is titled: AFFIDAVIT OF PERSONAL SERVICE
2. My telephone number, fax number and address are listed below.
3. I have examined the document, emailed to Montgomery Law Firm on September 24, 2014 and have determined that it consists of three (3) pages, including this Declaration page, and that it is complete and legible.

Under penalty of perjury under the laws of the State of Washington, I declare the preceding statements to be true and correct.

DATED this 24 day of September, 2014, in Colville, Washington.


Shandy M. Wahl

MONTGOMERY LAW FIRM
344 East Birch Avenue
P.O. Box 269
Colville, WA 99114-0269
(509) 684-2519
(509) 684-2188 Fax

RECEIVED

SEP 30 2014

PAINE HAMBLEN LLP

COPY
ORIGINAL FILED

SEP 29 2014

SUPERIOR COURT
STEVEN'S COUNTY, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

CONNELLY COMPANY INCORPORATED,)

a Washington Corporation doing business as) No. 2014 2 00446-8

Lodi Water Company,)

Plaintiff,)

NOTICE OF APPEARANCE

vs.)

PRIMO WATER CORPORATION, a Delaware)

Corporation,)

Defendant.)

TO: THE CLERK OF THE COURT; and

TO: CONNELLY COMPANY INCORPORATED, Plaintiff; and

TO: CHRIS A. MONTGOMERY, Plaintiff's attorney:

YOU AND EACH OF YOU, will please take notice that **DEFENDANT, PRIMO WATER CORPORATION**, hereby enters its appearance in the above cause and requests that all further pleadings and papers herein (except process) be served upon its attorneys, the undersigned, at the address below stated.

NOTICE OF APPEARANCE - 1

PAINE HAMBLEN LLP
717 WEST SPRAGUE AVENUE SUITE 1200,
SPOKANE, WA 99201 PHONE (509) 455-6000
FAX (509) 838-0007

23

1
2 DATED this 26th day of September, 2014.

3 PAINE HAMBLÉN LLP

4
5 By: 

6 Gregory C. Hesler, WSBA No. 34217
7 Attorneys for Defendant
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26 NOTICE OF APPEARANCE - 2

27 PAINE HAMBLÉN LLP
28 717 WEST SPRAGUE AVENUE SUITE 1200,
SPOKANE, WA 99201 PHONE (509) 455-6000
FAX (509) 838-0007

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2014, I caused to be served a true and correct copy of the foregoing NOTICE OF APPEARANCE, by the method indicated below and addressed to the following:

Chris A. Montgomery
Montgomery Law Firm
344 East Birch Avenue
P. O. Box 269
Colville, Washington 99114-0269

☒
☐
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☐

U.S. MAIL
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Debbie Miller
Debbie Miller

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PAINÉ HAMBLÉN LLP
717 WEST SPRAGUE AVENUE SUITE 1200,
SPOKANE, WA 99201 PHONE (509) 455-6000
FAX (509) 838-0007

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Entity Details**THIS IS NOT A STATEMENT OF GOOD STANDING**

File Number: 3869890 **Incorporation Date / Formation Date:** 10/20/2004 (mm/dd/yyyy)
Entity Name: PRIMO WATER CORPORATION
Entity Kind: CORPORATION **Entity Type:** GENERAL
Residency: DOMESTIC **State:** DE

REGISTERED AGENT INFORMATION

Name: NATIONAL CORPORATE RESEARCH, LTD.
Address: 615 S DUPONT HWY
City: DOVER **County:** KENT
State: DE **Postal Code:** 19901
Phone: (302)734-1450

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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